

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
R.H., Appellant)	
)	
and)	Docket No. 21-0249
)	Issued: January 11, 2024
U.S. POSTAL SERVICE, PALOS VERDES)	
PENINSULA POST OFFICE,)	
Palos Verdes Peninsula, CA, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 10, 2020 appellant filed a timely appeal from a November 6, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 6, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP properly determined that appellant forfeited her right to compensation for the period February 13, 2013 through January 2, 2019, pursuant to 5 U.S.C. § 8106(b)(2), because she knowingly failed to report employment activities and earnings.

FACTUAL HISTORY

On March 5, 1999 appellant, then a 36-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a right upper extremity injury due to factors of her federal employment, including repetitively handling mail. She noted that she first became aware of her claimed injury and realized its relation to her federal employment on January 19, 1999. Appellant stopped work on February 18, 1999 and OWCP accepted her claim for right wrist sprain and right carpal tunnel syndrome. She returned to limited-duty work on February 19, 1999, but stopped work again on August 31, 2001 when she underwent OWCP-authorized right carpal tunnel release surgery. Appellant intermittently stopped work for additional periods and OWCP paid her wage-loss compensation for disability from work on the supplemental rolls commencing July 26, 2002 and on the periodic rolls commencing February 10, 2013.

In January 2014, OWCP requested that appellant complete the first of a series of EN-1032 forms, which contained extensive language advising her what types of employment activities and earnings that she was required to report for each 15-month period prior to the time she signed each form. The EN-1032 forms instructed appellant to report all employment for which she received a salary, wages, income, sales commissions piecework, or payment of any kind. She was directed to report all self-employment or involvement in business enterprises, including (but not limited to) farming, sales work, operating a business (including a store or restaurant), and providing services in exchange for money, goods, or other services. The kinds of services that appellant was required to report included such activities as carpentry, mechanical work, painting, contracting, childcare, odd jobs, keeping books/records, and managing/overseeing a business of any kind, including a family business. Such activities had to be reported even if they were part time or intermittent.

The EN-1032 forms also instructed appellant to report any work or ownership interest in any business enterprise, even if the business lost money or if profits or income were reinvested or paid to others. If she performed any duties in a business enterprise for which she was not paid, she had to show as the rate of pay what it would have cost the employer or organization to hire someone to perform the work or duties she did, even if the work were for her or a family member or relative. The forms contained certification clauses, which informed appellant of the consequences of not accurately reporting her earnings and employment activities, such as being subjected to criminal prosecution.

On February 11, 2014 appellant signed a Form EN-1032 in which she responded “Yes” to a question asking her whether she had worked for any employer during the past 15 months before signing the form. She listed the “dates of employment” as February 15, 2012, and the “description of work done” as filling out papers for physician/therapy appointments and taking “mildly [mentally handicapped] and blind” individual(s) to such appointments, as well as to the store, church, and music lessons. Appellant indicated that the rate of pay was \$11.50 and the actual earnings were \$75.00 to \$100.00. For “name/address of employer” she listed two individuals by

name, M.A. and B.M, and a street address in Perris, California. Appellant responded “No” to indicate that she had not been self-employed or involved in any business enterprise in the past 15 months.³

On February 8, 2015 appellant signed a Form EN-1032 in which she responded “Yes” to a question asking her whether she had worked for any employer during the past 15 months before signing the form. She listed the “dates of employment” as January 2012, and the “description of work done” as “advocate for visually impaired, intellectual disability.” Appellant indicated that the rate of pay was \$11.50 and failed to provide an entry for the actual earnings. For “name/address of employer” she listed the individuals M.A. and A.S., and the previously listed street address in Perris, California. Appellant responded “No” to indicate that she had not been self-employed or involved in a business enterprise in the past 15 months.

On February 9, 2016 appellant signed a Form EN-1032 in which she responded “Yes” to a question asking her whether she had worked for any employer during the past 15 months before signing the form. She listed the “dates of employment” as February 2012, and the “description of work done” as “read or fill out papers for blind [and] advocate for autism.” Appellant indicated that the rate of pay was \$11.00, and the actual earnings were \$1,300.00 per month. For “name/address of employer” she listed the individuals M.A. and A.S., and the previously listed street address in Perris, California. Appellant responded “No” to indicate that she had been self-employed or involved in a business enterprise in the past 15 months.

On February 9, 2017 appellant signed a Form EN-1032 in which she responded “Yes” to a question asking her whether she had worked for any employer during the past 15 months before signing the form. She listed the “dates of employment” as January 2012, and the “description of work done” as “reading fill out papers for visually impair person” and “advocate for blind [and] intellectual [illegible].” Appellant indicated that the rate of pay was \$11.15, and the actual earnings were \$1,492.00. For “name/address of employer” she listed the individuals M.A. and A.S., and the previously listed street address in Perris. Appellant responded “N/A” in response the question whether she had been self-employed or involved in a business enterprise in the past 15 months.

On February 16, 2018 appellant signed a Form EN-1032 in which she responded “Yes” to a question asking her whether she had worked for any employer during the past 15 months before signing the form. She listed the “dates of employment” as January 1, 2017, and the “description of work done” as “help dementia person” and “as visually impair with papers advocate.” Appellant indicated that the rate of pay was \$11.50, and the actual earnings were \$2,200.00 per month. For “name/address of employer” she listed a street address in Moreno Valley, California. Appellant responded “No” to indicate that she had been self-employed or involved in a business enterprise in the past 15 months.

On February 6, 2019⁴ appellant signed a Form EN-1032 in which she responded “Yes” to a question asking her whether she had worked for any employer during the past 15 months before

³ In another portion of the form, appellant indicated that she had been unemployed from “[June 2009] until now” and added a notation referencing the date February 2012 and the previously referenced individual, M.A.

⁴ Appellant inadvertently wrote “February 6, 2018” but the content and context of the document indicate that she actually signed it on February 6, 2019.

signing the form. She listed the “dates of employment” as January 1, 2012, and the “description of work done” as “help dementia person and help advocate for visually impair [sic] person with paperwork.” Appellant indicated that the rate of pay as \$11.50, and the actual earnings as \$2,200.00. For “name/address of employer” she listed the previously provided street address in Moreno Valley. Appellant responded “No” to indicate that she had been self-employed or involved in a business enterprise in the past 15 months.

On October 23, 2020 OWCP received an investigative report produced on March 30, 2020 by a special agent for the Office of Inspector General of the employing establishment. The agent indicated that, after receiving earnings information from a state government services entity that revealed appellant omitted information from EN-1032 forms completed between 2014 and 2019, he interviewed appellant on February 3, 2020 to obtain clarification of details regarding this work activity. During the interview, appellant confirmed that, on multiple occasions she failed to report accurately on the EN-1032 forms the number of people for whom she provided care, the services provided, and the income she received. The agent noted that, during the interview, appellant indicated that she was an in-home support services provider, and that her duties were to cook, clean, shuttle recipients to medical appointments, assist with paperwork, bathe, provide bowel/bladder care, apply medication, do laundry, help with grooming, assist in changes of body positioning, and give periodic massages. He indicated that payment records from the state government services entity revealed that appellant had the following yearly amounts of gross earnings: \$17,907.98 for 2013; \$26,574.30 for 2014; \$30,118.54 for 2015; \$38,885.65 for 2016; \$39,911.59 for 2017; \$39,241.84 for 2018; and \$20,032.50 for 2019. The agent advised that the records from the state government services entity revealed that appellant provided in-home support services to four individuals between 2013 and 2019, but that appellant omitted her care for one or more of these individuals on each of the EN-1032 forms, which covered this period. The investigative report is supported by pay records documenting appellant’s earnings between 2014 and 2019.

By decision dated November 6, 2020, OWCP determined that appellant forfeited her right to compensation from February 13, 2013 through January 2, 2019 because she knowingly failed to fully report employment and earnings on EN-1032 forms covering this period. It advised that, on October 23, 2020, it received an investigative report produced by the employing establishment, which showed that she did not fully report her employment activities and earnings on each of the EN-1032 forms covering the period February 13, 2013 through January 2, 2019. OWCP indicated that appellant worked and had earnings as an in-home support services provider for a state government services entity between February 13, 2013 and January 2, 2019 and noted that the wording of the EN-1032 forms advised her of the need to fully report such employment and earnings.

LEGAL PRECEDENT

Section 8106(b) of FECA provides that an employee who fails to make an affidavit or report when required or knowingly omits or understates any part of his or her earnings, forfeits his or her right to compensation with respect to any period for which the affidavit or report was required.⁵ An employee, however, can only be subjected to the forfeiture provision of 5 U.S.C.

⁵ 5 U.S.C. § 8106(b).

§ 8106(b) if he or she knowingly failed to report employment or earnings. It is not enough to merely establish that there were unreported earnings.⁶ OWCP's procedures recognize that forfeiture is a penalty, and, as a penalty provision, it must be narrowly construed.⁷ The term knowingly is defined within OWCP's regulations as with knowledge, consciously, willfully, or intentionally.⁸

OWCP's regulations define earnings from employment or self-employment as: (1) gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses, and any other goods or services received in kind as remuneration; or (2) a reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration."⁹ Neither lack of profits, nor the characterization of the duties as a hobby, removes an unremunerated individual's responsibility to report the estimated cost to have someone else perform his or her duties."¹⁰

The language on OWCP's EN-1032 forms is clear and unambiguous in requiring a claimant to report earnings for the previous 15 months from any employer, self-employment, or a business enterprise in which he or she worked. The forms further emphasize that severe penalties may be applied for failure to report all work activities thoroughly and completely.¹¹

ANALYSIS

OWCP properly determined that appellant forfeited her right to compensation for the period February 13, 2013 through January 2, 2019, pursuant to 5 U.S.C. § 8106(b)(2), because she knowingly failed to report employment activities and earnings.

The case record establishes that appellant had employment activity and earned monies from her employment during the period February 13, 2013 through January 2, 2019. However, she did not fully report such earnings and employment on the forms submitted to OWCP, which covered the period February 13, 2013 through January 2, 2019.

As noted above, an employee can only be subjected to the forfeiture penalty provision of 5 U.S.C. § 8106(b) if he or she knowingly failed to report employment or earnings, and the term knowingly is defined within OWCP's regulations as with knowledge, consciously, willfully, or intentionally.¹² Regarding whether appellant knowingly failed to report earnings from outside her

⁶ *T.G.*, Docket No. 19-0051 (issued August 20, 2019); *P.H.*, Docket No. 17-1362 (issued March 13, 2018).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Forfeiture*, Chapter 2.1402.5, 8 (May 2012). *See also M.G.*, Docket No. 20-0735 (issued October 23, 2020); *T.P.*, Docket No. 17-0717 (issued April 11, 2018); *Christine P. Burgess*, 43 ECAB 449 (1992).

⁸ 20 C.F.R. § 10.5(n). *See also R.A.*, Docket No. 18-0406 (issued January 28, 2019); *I.S.*, Docket No. 17-0897 (issued April 9, 2018); *Anthony A. Nobile*, 44 ECAB 268 (1992).

⁹ *Id.* at § 10.5(g).

¹⁰ *Id.*

¹¹ *B.K.*, Docket No. 17-0406 (issued December 12, 2017).

¹² *See supra* notes 7 through 9.

federal employment, the Board notes that the language on the EN-1032 forms instructed her to report all earnings, whether from salaries, self-employment, or sales commissions. The Board finds that the plain language on the EN-1032 forms was sufficient to put her on notice that she was required to report all earnings outside her federal employment.¹³

The EN-1032 forms signed by appellant used such terms as “business,” “enterprise,” and “service” to explain the obligation for reporting all forms of employment, self-employment and earnings.¹⁴ The explicit language of the EN-1032 forms advised her that the nature of her work as an in-home support services provider would require her to fully report such employment activities on the forms. Appellant’s signing of the strongly-worded certification clauses on the EN-1032 forms further shows that she was aware of materiality of her failure to fully report her employment and earnings.¹⁵

On October 23, 2020 OWCP received an investigative report produced on March 30, 2020 by a special agent for the Office of Inspector General of the employing establishment. The agent indicated that, after receiving earnings information from a state government services entity that revealed appellant omitted information from EN-1032 forms completed between 2014 and 2019, he interviewed appellant on February 3, 2020 to obtain clarification of details regarding this work activity. During the interview, appellant confirmed that on multiple occasions she failed to report accurately on the EN-1032 forms the number of people for whom she provided care, the services provided, and the income she received. The agent noted that, during the interview, appellant indicated that she was an in-home support services provider, and that her duties were to cook, clean, shuttle recipients to medical appointments, assist with paperwork, bathe, provide bowel/bladder care, apply medication, do laundry, help with grooming, assist in changes of body positioning, and give periodic massages for at least one recipient. He indicated that payment records from the state government services entity revealed that appellant had the following yearly amounts of gross earnings: \$17,907.98 for 2013; \$26,574.30 for 2014; \$30,118.54 for 2015; \$38,885.65 for 2016; \$39,911.59 for 2017; \$39,241.84 for 2018; and \$20,032.50 for 2019. The agent advised that the records from the state government services entity revealed that appellant provided in-home support services to four individuals between 2013 and 2019, but that appellant omitted her care for one or more of these individuals on each of the EN-1032 forms, which covered this period.

The Board notes that, on the EN-1032 forms which collectively covered the period of forfeiture, *i.e.*, February 13, 2013 and January 2, 2019, appellant only provided incomplete information regarding the income she earned during the 15-month period covered by each form.

¹³ *T.G.*, Docket No. 16-1379 (issued August 4, 2017); *K.Z.*, Docket No. 12-0784 (issued August 27, 2012).

¹⁴ The EN-1032 forms instructed appellant to report all employment for which she received a salary, wages, income, sales commissions, piecework, or payment of any kind. Appellant was directed to report all self-employment or involvement in business enterprises, including (but not limited to) operating a business, and providing services in exchange for money, goods or other services. The kinds of services that she was required to report included such activities as carpentry, mechanical work, painting, contracting, keeping books and records, odd jobs, and managing and overseeing a business of any kind, including a family business.

¹⁵ *See I.S.*, *supra* note 8.

Appellant did not fully report the amounts of earnings documented in the investigative report. Appellant also understated her employment activities.

Under these circumstances, the Board concludes that appellant knowingly omitted earnings under section 8106(b)(2) of FECA by failing to fully report earnings and employment activities as an in-home support services provider on the applicable EN-1032 forms covering the period February 13, 2013 through January 2, 2019. Accordingly, the Board finds that OWCP properly determined that she forfeited her right to compensation from February 13, 2013 through January 2, 2019.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly determined that appellant forfeited her right to compensation for the period February 13, 2013 through January 2, 2019, pursuant to 5 U.S.C. § 8106(b)(2), because she knowingly failed to report employment activities and earnings.

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 11, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board